

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ASPEN SPECIALTY INSURANCE)	
COMPANY, as Subrogee of Trinity)	
Health Corporation, and TRINITY)	
HEALTH CORPORATION)	
)	
Plaintiffs,)	Case No. 3:22-CV-0044-JD-MGG
)	
v.)	
)	
BLACKBAUD, INC.,)	
)	
Defendant.)	
)	

BLACKBAUD'S MOTION TO DISMISS

According to Rules 12(b)(1), 12(b)(6), and 9(b) of the Federal Rules of Civil Procedure, Defendant Blackbaud, Inc. (“Blackbaud”) moves to dismiss all claims brought by Plaintiffs Aspen Specialty Insurance Company (“Aspen”) and Trinity Health Corporation (“Trinity”). As described more fully in the *Memorandum of Law* filed with this *Motion*:

First, Aspen is not a party to the insurance policy that purportedly authorizes its suit against Blackbaud and should therefore be dismissed for lack of Article III standing pursuant to Federal Rule of Civil Procedure 12(b)(1).

Second, Plaintiffs failed to plead they suffered any compensable damages under Indiana law and failed to plead that their alleged damages were caused by Blackbaud’s conduct, and thus all six claims should be dismissed for failure to state a claim upon which relief can be granted.

Third, Plaintiffs’ relationship with Blackbaud is based entirely in contract, and therefore all of Plaintiffs’ negligence claims are barred by the economic loss rule.

Fourth, Plaintiffs fail to plead the essential elements of their negligent and fraudulent misrepresentation claims, and likewise fail to plead those claims with particularity as required by Federal Rule of Civil Procedure 9(b).

Fifth, to the extent Plaintiffs' tort claims are based on a violation of federal laws and regulations, those claims are barred as a matter of law.

Sixth, Plaintiffs fail to allege the existence of a fiduciary relationship between the parties, and therefore Plaintiffs' breach of fiduciary duty claim fails as a matter of law.

Therefore, Blackbaud respectfully requests the Court to dismiss Plaintiffs' Complaint in its entirety and to grant all other appropriate relief.

Respectfully submitted,

/s/ Michael J. Hays
James M. Lewis (15784-71)
Michael J. Hays (23606-71)
THK LAW, LLP
212 E. LaSalle Ave.
South Bend, IN 46617
(574) 232-3538
jlewis@thklaw.com
mhays@thklaw.com

Attorneys for Defendant

Of Counsel:

Richard S. Glaser
Jason R. Benton
Sarah Fulton Hutchins
Corri A. Hopkins
PARKER POE ADAMS & BERNSTEIN LLP
620 South Tryon St, Suite 800
Charlotte, NC 28202
(704) 335-6639